

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)

Implementation of Sections of the)
Cable Television Consumer Protection)
and Competition Act of 1992:)
Rate Regulation)

Leased Commercial Access)

MM Docket No. **92-266**

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CS Docket No. **96-60**

To: The Commission

**REPLY COMMENTS
OF
SOUTH CENTRAL COMMUNICATIONS CORPORATION**

South Central Communications Corporation ("SCCC") submits hereby its Reply Comments in the captioned proceeding. In furtherance whereof, the following is stated.

Preliminary Statement

SCCC has a vital interest in the near-term adoption and efficient implementation of rules providing for leased access to cable television systems on a reasonable basis. That interest derives essentially from SCCC's position as a virtual pioneer in the Low Power Television service ("LPTV") and currently the licensee and operator of eleven LPTV stations in both small and relatively large communities. SCCC began its LPTV operations in 1989 and

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has experienced the gamut of challenges and problems attending such undertakings, including repeated but largely unsuccessful efforts to achieve cable carriage.^{1/}

SCCC has analyzed initial comments filed in this proceeding and believes that, on balance, they do assist in focusing upon the root issues. However, and perhaps inevitably, the inarguably unique position and needs of LPTV respecting cable access tend to be obfuscated amidst the exhaustive proposals and counter-proposals respecting rate formulas, dispute resolution procedures and like matters. Although such aspects must of course be dealt with and resolved ultimately, it is respectfully submitted that the Commission must, as a threshold matter, acknowledge and accord decisional significance to the unique position and needs of LPTV vis-a-vis leased access on cable television systems. Only through such action, taken in concert with the prospective development of reasonable rates and related procedures generally, may the Commission satisfy Congress' statutorily decreed interest in encouraging the carriage of LPTV stations on cable television systems.^{2/}

SCCC believes that it is neither necessary nor appropriate to inject into this proceeding essentially ad hominem accusations respecting the prior conduct and practices of given cable entities respecting the efforts of prospective users to acquire leased access generally. To the extent that such entities may fairly be seen to have inordinately resisted such efforts, that

^{1/} SCCC is the licensee of the following LPTV operations: WJPS-LP, WEEKS-LP, W52AZ and W67CB, Evansville, IN; WRMX-LP, WJDE-LP and W68CG, Nashville, TN; WEZK-LP, Knoxville, TN; W49AX, Louisville, KY; W66CT, Mt. Vernon, IN, and WYHY-LP, Sevierville, TN.

^{2/} It is assumed here, arguendo, that the Commission's extant "must-carry" provisions will remain in place as now framed. As the Commission's own records will reflect, those provisions, as a practical matter, do not afford must-carry rights to the vast majority of operating LPTV stations.

result may be assigned largely to an admittedly flawed regulatory scheme which admits of and indeed encourages the maximum exercise of basic competitive instincts. It is now for the Commission itself to cure that flaw through the adoption and strict enforcement of precise and fair provisions which will allow for the realistic achievement of leased access on a reasonable basis in the public interest.

Exposition

As to be expected, the initial comments in this proceeding pose conflicting positions and proposals as to various aspects of the leased access phenomenon.^{3/}At the same time, however, the comments serve to identify certain matters which are not in dispute and are in fact of decisional significance in this proceeding. In summary, they are as follows:

- The record to date demonstrates beyond question that prospective leased access users have unfairly and unreasonably been denied the leased access rights envisioned by relevant statute and regulation. That is particularly so as to the LPTV universe.
- The evidentiary record does not support the contention that the extant or proposed leased access requirements impose an inordinate burden upon

^{3/} SCCC is also a member of the Community Broadcasters Association ("CBA"), which represents LPTV operators and which filed initial comments herein. SCCC is in essential agreement with and supports the basic position and arguments advanced by CBA, particularly as they demonstrate the particular need of LPTV for access to cable systems on a reasonable, leased access basis as well as the inequity and inadequacy of the extant provisions in that respect. SCCC also supports the proposals of CBA respecting such matters as rate computations, dispute resolution, enforcement and the like. As to the latter aspects, however, it is acknowledged that the Commission itself may choose to adopt other procedures and mechanisms which, although different in form, will achieve the ultimate goal, i.e., efficient leased access on a mutually fair and reasonable basis.

cable operations generally. It is axiomatic that every right accorded by government (such as enjoyed by cable television) carries related obligations (such as, for instance, those imposed upon broadcast operations). Such burden, if any, as may be imposed upon cable by leased access provisions is eminently reasonable and in the public interest.

- LPTV is unique among prospective leased access users both in terms of its status as a Commission-licensed undertaking and an entity as to which Congress has expressed special encouragement that it be carried on cable television systems.

The foregoing factors are discussed briefly below.

Denial of Leased Access Rights

The record herein is replete with specific examples of LPTV operations having sought, but having been unreasonably denied, leased access on various cable systems. Thus, at Note 2 of its comments herein, CBA correctly states "In previous phases of this proceeding, LPTV operators have told the Commission of demands by cable operators for literally millions of dollars a year for the lease of a channel; ...".^{4/}

Comments filed by individual LPTV operators in this proceeding lend current force to that stark scenario. See, e.g., (1) comments of WZBN TV-25 (Station W25AW, Mercer County, NJ) reciting a leased access demand of \$18,200 per month (\$218,400 per year) for access on a 40,000 subscriber system, such fee equaling some 58% of the station's total

^{4/} CBA there also acknowledges the frightening likelihood that in many such instances, "... those demands appear to have been in compliance with the existing rules." (*Id.*) It also correctly observes, however, that "Those prices are excessive and extreme, not fair; they are not 'reasonable' and must be lowered to reasonable levels." (*Id.*)

revenues; (2) comments of Ervin Scala Broadcasting Corporation (Station KSSY-LP, Arroyo Grande, CA) reciting a leased access demand of some \$70,000 per month (\$840,000 per year) on a system having some 75,000 subscribers; (3) comments of The Vacation Channel, Inc. (Station K31DV, Branson, MO) reciting a yearly payment, per demand, of some \$115,000 for access on a system having approximately 21,000 subscribers, the payment constituting some 17.5% of the station's gross annual revenue and (4) comments of WGBN-TV (Station W66BQ, Freedom, PA) reciting a demand of \$2,600,000 per year by a system serving only one third of the Pittsburgh, PA DMA.

SCCC has itself encountered comparable resistance in its efforts to acquire leased access cable carriage as to, for instance, its Station W52AZ in Evansville, IN. That station originates a substantial amount of local programming and is roundly recognized for its overall programming efforts. Although it is voluntarily carried by a cable system in its service area, others within that universe have either flatly refused to deal meaningfully with respect to the station's leased access requests or, as in one recent instance, have quoted access rates which both parties recognized at the outset were the practical equivalent of outright rejection.

Such instances clearly manifest a nationwide failure of the extant leased access provisions to achieve the underlying statutory goals. They compel, as well, the prompt adoption of revised rate formulas and related procedures which will affirmatively encourage the fair and reasonable provision of leased access to cable systems.

The Cable "Burden"

None of the now filed comments compel or support a conclusion that cable as such would be inordinately burdened by the adoption of some version of a cost/market rate formula such as tentatively proposed by the notice herein.^{5/} Indeed, the gravamen of the bulk of cable generated comments appear to reflect an understandable visceral aversion to leased access conceptually or in any event the retention of the provisions which have, as a practical matter, absolved the great bulk of cable operations from having actually to provide leased access in the first instance.

Assuming, arguendo, that in some instances a cost/market formula may be seen actually to "burden" a given cable system by reducing the total revenue that it may otherwise have gained through a different "use" of a given channel, that prospect in itself does not warrant rejection of changes such as here proposed. It is axiomatic that any "right" brings with it a commensurate obligation. And where, as here, Congress has decreed that the provision of leased cable access on a reasonable basis is in the public interest, some diminution of revenues--were it to occur--must be seen as a reasonable burden to be borne by a given cable operator incident to achieving the public interest goal in question.

Analogous circumstances are abundant. Thus, for instance, all radio and television stations are required to provide certain political candidates access to their station and to receive only the "lowest unit charge" incident to the candidate's purchase of political advertising time during certain periods. It is manifest that such requirements serve to reduce the revenue which a given station would otherwise be able to realize by an unfettered

^{5/} Further Notice of Proposed Rule Making, FCC 96-122, paras. 14-19.

"commercial" use of the time in question. Because it advances the overall public interest, however, such "burden" is properly seen to be reasonable and acceptable. So, too, would be such revenue diminution which may attend the provision of leased access as generally now proposed by the Commission.^{6/}

The Unique Position of LPTV

LPTV is uniquely positioned among the universe of prospective leased access users. LPTV stations are, in the first instance, Commission licensees as to which there obtains the threshold presumption that their service is in fact in the public interest.^{7/} Further, and of decisional significance here, Congress has particularly encouraged the carriage of LPTV stations on cable television systems, specifically stating that

"Cable systems should be encouraged to carry low-power television systems licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming."^{8/}

At para. 115 of the FNPRM herein, the Commission observed that, in its view, there was insufficient evidence on the then extant record to warrant preferential leased access

^{6/} The record herein does not sustain even the suggestion that the provision of leased access on a reasonable basis would have a materially adverse financial impact upon cable operations in general.

^{7/} Although the same may obtain as to standard television stations such stations by and large are not prospective users of leased access by reason of their far greater over-the-air reach and the eligibility of most for cable carriage through the must-carry provisions.

^{8/} Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 521 et seq. Therein Congress also stated its policy that the purposes of the Act were, inter alia, to "promote the availability to the public of a diversity of views and information through cable television and other video distribution media;" and to "Ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers." (Id.)

treatment for LPTV stations and invited further comment in that respect. It is submitted that the initial comments in this phase of the proceeding--as partially described above--provide such evidence and thus warrant preferential leased access treatment for local LPTV stations. See also in this respect the initial Comments of CBA at paras. 17-20.

Conclusion

The record herein clearly demonstrates that the existing rules and procedures respecting leased access on cable television systems are simply unworkable and cannot achieve the public interest goal of providing fair and reasonable access. Indeed, the current provisions admit of access rates which are prohibitively unreasonable. The Commission's apparent recognition of that and other flaws is laudable, as is its stated purpose now to provide for mutually fair and reasonable access rates and related procedures. Incident to that undertaking, the Commission should also, for the reasons shown above, accord decisional cognizance to the unique position and needs of LPTV vis-a-vis leased access generally.

Respectfully submitted,

SOUTH CENTRAL COMMUNICATIONS
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May 31, 1996

Certificate of Service

I, Lois L. Trader, do hereby certify that I have this 31st day of May, 1996, sent by first-class, postage prepaid mail copies of the foregoing "Reply Comments of South Central Communications Corporation" to the following:

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